IN THE HIGH COURT OF BOMBAY AT GOA
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APPEAL FROM ORDER NO. 55 OF 2001 WITH MISC. CIVIL APPLICATIONS NO.565 OF 2001 AND NO. 387 OF 2003 AND APPEAL FROM ORDER NO. 62 OF 2001

APPEAL FROM ORDER NO. 55 OF 2001

Ramesh Damodar Bhakta,
35 years old, businessman,
r/o Madhu Kunj 101,
Alto de Porvorim,
Bardez, Goa. ... Appellant.

Versus

Mrs. Padmaja aias
Ranjana Bhakta, 35 years
old, r/o House No.210 A,
Pedem, Mapusa, Bardez,
Goa. ... Respondent.

Shri M. S. Usgaokar, Senior Advocate with Shri I. Aga, advocate for the appellant.

Shri J. E. Coelho Pereira, Senior Advocate with Shri V. Korgaokar, advocate for the respondent.

MISCELLANEOUS CIVIL APPLICATIONS NO. 565 OF 2001 AND 387 OF 2003

Mrs. Padmaja aias
Ranjana Bhakta, 35 years
old, r/o House No.210 A,
Pedem, Mapusa, Bardez,
Goa. ... Applicant.

Versus

Ramesh Damodar Bhakta,
35 years old, businessman,
r/o Madhu Kunj 101,
Alto de Porvorim,
Bardez, Goa. ... Respondent.

Shri J. E. Coelho Pereira, Senior Advocate with Shri V. Korgaokar, advocate for the applicant.

Shri M. S. Usgaokar, Senior Advocate with Shri I. Aga, advocate for the respondent.

APPEAL FROM ORDER NO. 62 OF 2001

Mrs. Padmaja aias
Ranjana Bhakta, 35 years
old, r/o House No.210 A,

Pedem, Mapusa, Bardez,
Goa. ... Appellant.

Versus

Ramesh Damodar Bhakta,
35 years old, businessman,
r/o Madhu Kunj 101,
Alto de Porvorim,
Bardez, Goa. ... Respondent.

Shri J. E. Coelho Pereira, Senior Advocate with Shri V. Korgaokar, advocate for the appellant.

Shri M. S. Usgaokar, Senior Advocate with Shri I. Aga, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE : 1st August, 2003.

ORAL JUDGMENT

These Appeals and Miscellanoeus Applications can be disposed of by a common order. In the Appeals the appellants are husband and wife respectively. Both have challenged the Order dated 27th July, 2001. By the said order, the learned trial Court awarded maintenance at the rate of Rs.15,000/- per month from the date of the petition. Apart from that there is also an injunction restraining the defendant in the suit, the husband, from dispossessing the plaintiff and the children from the matrimonial home and also from assaulting the wife and children.

2. In the Appeal by the husband i.e. Appeal From Order No. 55 of 2001, it is contended that the learned trial Court did not address itself to the real issue, namely finding out as to what is the real income of the appellant for the purpose of fixing the maintenance. The only

documents available, it is contended, were the income tax returns, where the income has been shown as Rs.1,64,000/- for the Assessment Year 1997-1998. Apart from that, it is contended that there is no other material. In these circumstances it is contended that at the highest the trial Court could have proceeded by considering the said figure and thereafter arrived at the amount to be paid towards maintenance. The figure of Rs.15,000/-, therefore, it is contended, is not based on any cogent evidence or material which was available to the trial Court and, consequently, the order to that extent is liable to be set aside or modified.

3. On the other hand, on behalf of the wife who has also preferred an appeal being Appeal From Order no.62 of 2001, it is contended that the amount as awarded is on the lower side, considering the material placed and more specifically set out in paragraph 42 of the affidavit in rejoinder.

4. The suit by the plaintiff wife is for a decree for divorce for a relief by way of maintenance at the rate of Rs.30,000/- per month, or such sum as the Court deems fit and proper and for a permanent injunction. An application was taken out for interim maintenance, being Civil Misc. Application No.130/99/Sr/I, which came to be disposed of by the impugned Order dated 27th July, 2001. In the rejoinder to the reply filed by the husband, the wife set out the

following as would be the monthly expenses for herself and the children on the relevant date:-

(a) Fees of son Ritesh are Rs.220/- per month,

(b) Electricity and water bills at Rs.800/- and Rs. 400/- per month respectively,

(c) Telephone bill at Rs.1,000/- per month,

(d) Petrol bill and the salary of the driver at Rs.3,000/- and Rs.1,500/- respectively,

(e) Salary of the servant at Rs.1,000/- per month,

(f) Cable T.V. at Rs.200/- per month,

(g) Groceries at Rs.6,000/- per month,

(h) Fruits, vegetables, fish etc. at Rs.4,000/- per month,

(i) milk at Rs.1,200/- per month,

(j) Gas at Rs.300/- per month,

(k) Sweet meats and evening snacks and tiffin for the children at Rs.1,000/- per month,

(l) medicines for the children and herself at Rs.500/- per month,

(m) Clothes, books and childrens' toiletries, detergents, and miscellaneous expenses at Rs.5,000/- per month.

The claim as quantified works out to Rs.26,120/- per month.

It is further averred that the respondent was involved in the business of money-lending. At the time of filing the rejoinder it was pointed out that the respondent was remodelling a house at Porvorim being House No. 848. It was averred that the defendant is involved in real estate business and development of properties at Ponda in the name and style of "Castle Builders", which is his proprietory concern and has also purchased a prime and large property at Porvorim known as "Zambul Galum" and invested large amounts for development.

A sur-rejoinder came to be filed on behalf of the husband. These averments have not been specifically denied.

The trial Court had all this material available before it when the Order was passed and there is reference thereto in paragraph 6 of the order of the trial Court. The trial Court found the amount claimed by the wife to be too excessive and also noted the argument on behalf of the wife that the plaintiff was working in a Bank and she had to leave service and if she had not left the service she would have been earning a good salary. Taking all these factors into consideration, the learned trial Judge awarded the sum of Rs.15,000/- per month.

5. It is true that one of the documents which could be considered is the income tax certificate but that by itself cannot be the basis on which maintenance ought to have been granted. If the sum adverted to therein namely the sum of Rs.1,64,000/- is considered, it would hardly work out to Rs.13,000/- per month. At the relevant time the appellant and the respondent were residing in a bungalow in Mapusa admeasuring 132 sq. mts. They had two cars no doubt in the name of the firms. All this will indicate that the figures as shown in the income tax returns cannot be the basis for awarding maintenance.

Once that be the case, the Court will have to examine the family background of the parties, the life styles that they were enjoying both in the parental home as also in the matrimonial home. In the instant case, the wife herself

was employed in a Bank. It has come on record that the father of the wife has now retired as a Manager of a Bank. In other words, the appellant wife, would have been accustomed to a good living condition. They were further accustomed to having a car apart from other normal necessities. If that is taken into consideration, the expenses shown under items (a), (b),(c), (d) (e), (f), and (j) would be the normal expenses that would be incurred. Item no. (l) is for medicines, which a normal household are spends. Items (g), (h), (k) and (m) are also items which a household would be spending. If these aspects are taken into consideration, the amount awarded by the trial Court cannot be said to be on the excessive side. There are two growing children one in college and the other in school. Admittedly their expenses are bound to be on the increase, at least at this stage in life. The respondent wife herself is unemployed and has to maintain the family.

6. When the appeal was being admitted this Court directed an interim payment of Rs.6,500/- per month. Insofar as the arrears are concerned, they were directed to be deposited, subject to the final result of the Appeal. For the reasons aforestated, in my opinion no interference is called for with the order of the trial Court.

7. The wife had filed an appeal being Appeal From Order no.62 of 2001 for enhancement of compensation and also

certain observations insofar as interim orders are concerned. Insofar as those observations are concerned, they are only prima facie and will not bind the Court when it decides the issue which will have to be decided finally in the suit. Neither is it possible to grant further enhancement, as the sum of Rs.15,000/- would be reasonable in today's circumstances, for maintenance of the wife and two children, considering the material that has come on record before this Court.

8. Insofar as the visiting rights are concerned, the husband being the natural father, cannot be denied visiting rights. The parties however, to approach the trial Court and the trial Court after considering the contentions of the parties, to grant visiting rights according to law.

There are two Misc. Applications being Misc. Civil Application No. 565 of 2001 and No.387 of 2003. Misc. Civil Application 565 of 2001 was for withdrawal of the amount deposited and Mis. Civil Application No. 387 of 2003 was also an application for withdrawal. In view of the Appeal from Order being disposed of the two Misc. Civil Applications have become infructuous and are accordingly dismissed as infructuous.

The amount deposited in this Court be paid to the

appellant in Appeal From Order No.62 of 2001.

Appeals alongwith the Miscellaneous Applications accordingly disposed off.

F. I. REBELLO, J.

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